

canpfa

The Connecticut Association of Not-for-profit Providers For the Aging

Testimony to the Select Committee on Aging Presented by Mag Morelli, President

February 16, 2010

Regarding

**SB 103, An Act Concerning Access to Comprehensive Factual Information
Regarding Long-Term Care Facilities**

**SB 104, An Act Establishing a Cause Of Action for Nursing Home Facilities
Against Recipients of Transfers of Assets**

**SB 105, An Act Concerning Liability of Nursing Home Owners for Neglect
and Abuse of Nursing Home Residents**

**HB 5110, An Act Concerning Criminal Background Checks for Employees
of Homemaker-Companion Agencies and Home Health Agencies**

HB 5111, An Act Concerning the Alzheimer's Respite Care Program

**HB 5112, An Act Reducing the Individual Contribution Under the State-
Funded Home-Care Program for the Elderly**

**HB, 5113, An Act Concerning Billing for Services Covered by Long-Term
Care Insurance by Managed Residential Communities**

Good morning Senator Prague, Representative Serra, and members of the Committee. My name is Mag Morelli and I am the president of the Connecticut Association of Not-for-profit Providers for the Aging (CANPFA), an organization of over 150 non-profit providers of aging services representing the full continuum of long term care. On behalf of CANPFA I would like to present testimony on several bills that are before you today.

SB 103, An Act Concerning Access to Comprehensive Factual Information Regarding Long-Term Care Facilities

CANPFA objects to this bill because it creates unnecessary revisions to the already extensive nursing home residents' bill of rights, endorses a flawed 5-star rating system, and creates additional paperwork compliance that takes dwindling resources away from direct care and applies them to administrative functions without substantiating the value of that shift in resources.

We would support the requirement that the actual residents' bill of rights be redistributed to residents through out the stay as this is done in many facilities already and is a good reminder to both residents and their families of the

comprehensive set of rights they are afforded during their stay. However, the proposed revision that residents receive the staff to patient ratio on all shifts throughout their stay would be burdensome for facilities and is unnecessary as staffing levels are already posted in a nursing home on a daily basis by licensed and unlicensed categories. The information regarding the staffing ratios is currently available on the CMS Nursing Home Compare website and is also available at any time upon request.

Second, the bill also would require that residents be provided with a "written statement, prior to or at the time of admission and during the patient's stay, that the facility utilizes the most appropriate and best care practices." We question what the proposal would consider to be the definition of the "most appropriate and best care practices"? Are they practices that comply with the law, practices that the resident expects, or are they set by some other standard?

Third, while we have always endorsed the transparency of the nursing home inspection process and the availability of the Nursing Home Compare website, we cannot at this point in time support an initiative that validates or lends credence to the CMS 5-star rating system. It is truly unfortunate, but the current 5-star system is the result of a poorly executed idea being rushed out to the public in the waning days of the former administration. A 5-star plan may be the right idea, but this one was poorly planned, prematurely implemented and awkwardly rolled out. There is also no specific quality rating assigned to chronic disease hospitals which are also included in this statute.

There are many, many data flaws in the current 5-star quality rating system posted on the CMS website for skilled nursing facilities. For instance:

- The quality measures were not developed for use in a rating system and can produce misleading information for consumers.
- There is data to show that nursing homes that care for sicker residents are likely to receive fewer stars.
- There is data to show that large homes are likely to receive fewer stars.
- There is data to show that the quality measures chosen are not weighted appropriately and work against homes with busy sub-acute units.

In this current fiscal environment we are looking for ways to remove unnecessary and/or outdated regulations that require costly compliance without adding real value toward quality outcomes. We therefore seriously question these additional requirements in the residents' bill of rights that would require continued "distribution of written statements during the resident's stay" when it is not evident that such paper compliance would have significant impact on improving the quality of care received by these residents.

SB 104, An Act Establishing a Cause Of Action for Nursing Home Facilities Against Recipients of Transfers of Assets

CANPFA supports this proposed legislation that would provide a nursing home with a cause of action against the recipient of a transfer of assets to recover the outstanding balance due from any resident who enters into a penalty period as a result of a transfer of assets.

CANPFA members understand the reality that there are people who intentionally transfer assets to qualify for Medicaid. The federal government understands this too and in an effort to discourage the practice, they recently strengthened the penalty for doing so. Through the Federal Deficit Reduction Act of 2005, a new Medicaid penalty period has been implemented for persons who are found to have intentionally transferred their assets for the purpose of qualifying for Medicaid. Connecticut has implemented these new rules and currently will withhold Medicaid benefits for a penalty period that is equal to the amount the transferred asset. For instance, if you transferred \$100,000, your penalty period will run until you utilize \$100,000 worth of services.

For a nursing home, this new penalty period is alarming and potentially devastating. Unlike other providers, when a nursing home resident is assessed a penalty period – it is the nursing home that is financially penalized. While the state withholds payment, the nursing home must provide services while privately pursuing legal action to collect outstanding debts from the defaulting resident. Passing this legislation to allow the nursing home to *also* pursue the recipient of the transferred asset would be helpful and while it may not solve all of the problems, it would add an additional resource to nursing homes that are being financially hurt by the new transfer of asset penalty periods.

Background: Often, individuals are admitted to nursing homes before they become eligible for Medicaid. The nursing home resident may have some private assets to spend down first or they may be receiving Medicare benefits following hospitalization. Nursing homes typically ask applicants whether they have made any inappropriate asset transfers prior to admission, in anticipation of a Medicaid application being made in the future, but it is difficult to check the information provided by the resident and/or family, particular when residents are admitted from the hospital on short notice.

There is little recourse available to the nursing home if a resident subsequently applies for Medicaid and the Department of Social Services (DSS) determines the resident to be ineligible due to an inappropriate transfer of assets and enters a penalty period.

The nursing home cannot discharge the non-paying resident without an appropriate discharge plan and as a practical matter; no other nursing home will admit a resident during a penalty period. Moreover, discharge to home may not be allowable if the resident cannot receive the appropriate care at home. Thus, the nursing home cares for the patient without payment for the length of the penalty period.

So it is extremely important that we find a solution to this potentially devastating financial situation for our nursing homes and this legislation may well be part of that solution. In addition, we would request that the state implement the ability to provide hardship Medicaid payments to a nursing home that is unable to obtain payment and that the state then pursue the recipient of the transferred asset for the debt owed the state.

SB 105, An Act Concerning Liability of Nursing Home Owners for Neglect and Abuse Of Nursing Home Residents

CANPFA objects to this proposed bill which would require that the Department of Public Health include a notice in all nursing home change of ownership applications stating that any nursing home licensee or owner (including officers, directors), administrator, medical director, director of nursing and assistant administrator, director of nursing "may be subject to criminal liability, in addition to civil and administrative sanctions under federal and state law, for the abuse or neglect of a resident of the nursing home perpetrated by an employee of the nursing home." The bill also requires that this same notice be sent to all existing nursing home licensees or owners and that it be printed in **18 point type**.

To the extent the notice is intended to summarize criminal liability that already exists under state law, it is wrong. There is no state statute that provides for criminal liability of any of the categories of individuals enumerated in the proposed bill in connection with an employee's abuse or neglect of a nursing home resident.

Elder abuse is inexcusable, and those who break the public's trust should be harshly punished. However, in condemning and combating abuse, we must also acknowledge the many geriatric professionals and frontline caregivers in this state who provide exemplary, compassionate care for very frail nursing home residents. A threatening notice is hardly the message that needs to be sent to these professionals and caregivers.

HB 5110, An Act Concerning Criminal Background Checks for Employees Of Homemaker-Companion Agencies and Home Health Agencies

CANPFA supports the intent of the this proposed legislation to require criminal background checks of both homemaker-companion agency certificate of registration applicants and their employees, but we would request that the requirements in Section 3 of this bill be clarified to require that the extensive background check be completed by an agency on an applicant *as a condition of hire* and not be required on every *applicant* for a position.

HB 5111, An Act Concerning the Alzheimer's Respite Care Program

CANPFA supports this proposal to fund the Alzheimer's Respite Care Program that has been capped by the administration due to budget restraints.

Family caregivers have an important role to play in the long-term care system, but the challenges facing them are great. Connecticut's unpaid caregivers provided over \$1 billion worth of care to relatives and in return, they are called upon to sacrifice lost wages and to face significant physical and mental health risks. The risks of poor health and premature death are greatest among those who care for relatives with Alzheimer's disease. In order to continue reaping the benefits that family caregivers provide to older adults, we as a society must increase our support for them. A crucial aspect of that support is funding for respite care and therefore we strongly support this proposal to fully fund the program and allow additional participation.

HB 5112, An Act Reducing the Individual Contribution Under the State-Funded Home-Care Program for the Elderly

CANPFA supports the intent of this proposed legislation which is to lessen the negative impact of recently implemented co-pays on the state funded portion of the Connecticut Home-Care Program for the Elderly.

The state has adopted and embraced a long term care plan with a goal of rebalancing the system and providing choice for individuals seeking long term care. The Connecticut Home Care Program for Elders should be the flag ship program for this plan, but unfortunately the state funded portion of this program has been hurt by the implementation of a 15% co-payment. These co-pays are affecting access to care as the elderly who need services may be unable to afford the co-pay expense and are choosing not to take advantage of the necessary services. We know that receiving the right services at the right time in the most appropriate setting is the right thing and is the most cost effective thing to do. Therefore we urge the legislature to review the effect of the newly instituted co-pay on consumer choice and to put serious consideration into how best to modify it so as not to discourage participation.

HB, 5113, An Act Concerning Billing for Services Covered by Long-Term Care Insurance by Managed Residential Communities

CANPFA supports this proposed legislation which seeks to require that managed residential communities provide assistance to their residents in the preparation and submission of claims on their private long term care insurance policies. The bill also would require the long term care insurer to recognize the managed residential community's role in assisting the resident and to keep them informed during the claims process. Together these proposals would be of great assistance to many older adults who are residing in these communities and who are seeking to access their long term care insurance benefits.

An older adult who has purchased long term care insurance should not be denied benefits due to their inability to understand the claims process. Many CANPFA members already provide assistance to their residents who age in place and need to access their long term care insurance benefits to finance their assisted living services. We support this bill which should make the process much easier

not only for the residents, but also for the managed residential communities that are seeking to assist them.

Thank you for your consideration of this testimony. I would be happy to answer any questions.

Mag Morelli, President of CANPFA, mmorelli@canpfa.org, (860) 828-2903